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In the Supreme Court of the United States

OCTOBER TERM, 1939.

No. 171

THE HYGIENIC PRODUCTS COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Sixth Circuit and
BRIEF IN SUPPORT OF PETITION.

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To the United States Circuit Court of Appeals
For the Sixth Circuit.

To the Honorable, the Supreme Court of the United States:

This petition of The Hygienic Products Company respectfully shows:

STATEMENT OF THE MATTER INVOLVED.

Petitioner is an Ohio corporation, having its principal place of business at Canton, Ohio. On September 25, 1936 it filed its petition before the United States Board of Tax Appeals for a redetermination of a deficiency determined by the Commissioner of Internal Revenue set forth in his letter Cleveland IRA :90D, dated September 9, 1936. The petition was in the nature of an appeal from the refusal of the Commissioner to allow a deduction of $12,645.83 from taxes due the United States for the year 1934. Of this amount $10,848.30 represents taxes paid to the Canadian Government in the year 1934, determined, for the first time, in 1934 to be due the Canadian Government for the tax years 1930, 1931, 1932 and 1933. The petitioner has been

engaged in business in the Dominion of Canada for a period of more than fifteen years, being represented by Harold F. Ritchie and Company, Ltd., manufacturers representatives. The manner of doing business of the petitioner and its representative in Canada has been the same during the entire period. The Dominion of Canada in the year 1924 enacted an income tax law. The petitioner's representative in Canada advised the petitioner that it was not amenable to the income tax law of the Dominion of Canada and, accordingly, no returns for Canadian income tax were filed by the petitioner. The Dominion of Canada on August 22, 1933 requested the petitioner to file income tax returns for the years 1930, 1931, 1932 and 1933. Thereafter Dominion of Canada income tax returns were filed by the petitioner for the years 1930, 1931, 1932 and 1933 under respective dates of November 14, 1933, November 14, 1933, September 19, 1933 and June 19, 1934. Petitioner, until July 25, 1934, contested the imposition of any income tax by the Dominion of Canada on the theory that it is not doing business in the Dominion of Canada within the purview of the income tax law of the Dominion of Canada and it was not definitely determined to the satisfaction of the petitioner that it was amenable to the income tax law of the Dominion of Canada, at which time payment was made to the Dominion of Canada in the sum of $9,722.33, representing taxes, penalties and interest for income taxes due the Dominion of Canada for the years 1930, 1931 and 1932. On November 26, 1934 payment was made to the Dominion of Canada in the sum of $1,125.97, representing taxes, penalty and interest due the Dominion of Canada for the year 1933. The petitioner claimed a deduction from its taxes to the United States for 1934 for the amount paid to the Canadian Government under the provisions of Section 131 of the Revenue Act of 1934. The case was submitted upon stipulation of facts (R. 10, 11), the testimony of a Certified Public Accountant in behalf of petitioner (the only witness) and upon

briefs, and in a memorandum opinion the Board of Tax Appeals approved the deficiency determined by the respondent. (R. 12-18.)

Upon the transcript, an agreed statement of the evidence before the Board of Tax Appeals, briefs and oral argument the United States Circuit Court of Appeals for the Sixth Circuit affirmed the judgment of the Board of Tax Appeals as set forth in its opinion. (R. 31-33.)

The question involved is whether the petitioner must submit to double taxation by reason of an arbitrary label attached to the petitioner's bookkeeping method by the Commissioner of Internal Revenue notwithstanding the provisions of Section 131 of the Revenue Act of 1934.

Petitioner claims that the first and only opportunity it had to signify its desire to have the benefits of said section 131 was in its income tax return for the year 1934, and the Board of Tax Appeals in effect imposed on the petitioner a duty to do the impossible, and that, therefore, the Circuit Court erred in affirming the judgment of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT.

The United States Circuit Court of Appeals for the Sixth Circuit in this case decided a question of general law in a way probably untenable and in conflict with the weight of authority which abhors double taxation and construes statutes liberally in favor of the taxpayer. The precise question has not been, but should be, settled by this Court.

There are no other Circuit Court decisions on the questions involved in this case, but there is the decision in the case of *Arthur Jewett Connor v. United States* (1937—D. C. N. H.) 19 F. Supp. 97, in which the taxpaying petitioner was awarded a refund by reason of taxes paid the Canadian Government under facts practically identical to those in this case. The United States did not appeal to the First Circuit.

The holding of the Circuit Court of Appeals in the present case is believed to be patently erroneous and the interests of the law require that it be reversed.

PRAYER.

WHEREFORE, your petitioner prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record of all proceedings in the case numbered and entitled on its docket No. 8048, The Hygienic Products Company, Petitioner-Appellant, v. Commissioner of Internal Revenue, Respondent-Appellee, and that said judgment may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

THE HYGIENIC PRODUCTS COMPANY,

By: MEYER A. COOK,

Its Solicitor.